

**FILED**

Feb 15 2008, 9:35 am

*Kevin L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

ATTORNEY FOR APPELLEE:

**KELLY LEEMAN**  
Logansport, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 09A02-0709-CV-778

GLENN DOUGLAS MINKS,  
Appellee-Petitioner.

APPEAL FROM THE CASS SUPERIOR COURT  
The Honorable Thomas C. Perrone, Judge  
Cause No. 09D01-0501-DR-9

**February 15, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

## Bradford, Judge

Appellant-Respondent Shirley Ann Minks (“Wife”) appeals from the trial court’s order on remand, alleging the trial court abused its discretion by ordering an unequal division of the retirement benefits of her former husband, Glenn Douglas Minks (“Husband”). Because we conclude that the trial court’s order on remand ran counter to the instructions in this court’s first decision in this case, we reverse and remand with instructions.

### **Facts and Procedural History**

The underlying facts of this case were found by this court in its disposition of Wife’s appeal from the trial court’s original dissolution decree:

The facts most favorable to the trial court’s judgment reveal that Husband and Wife were married for approximately thirty-nine years. There were two children born of the marriage, but both were emancipated adults at the time of the filing of the petition for dissolution on January 28, 2004. Prior to the commencement of evidence, Wife filed a motion requesting written findings of fact and conclusions of law, which the trial court granted.

On January 27, 2006, the trial court issued its decree of dissolution, which contained the following pertinent findings of fact and conclusions of law:

9. Except for a short period of time when [Wife] was off work as a result of the birth of the parties’ children, she has worked throughout the marriage as a factory worker at Federal Mogul.
10. Throughout the marriage, [Husband] has worked as a public school teacher, ultimately achieving 30 years of continuous service before retiring early.
11. In addition to teaching school, [Husband] also worked as a carpenter and in construction, principally on home addition and remodeling jobs throughout the marriage.  
\* \* \*
13. At the time of the final hearing, [Husband’s] reported annual income was \$7,613.42 (L.C.S. Early Retirement Pay) and \$21,666.60 (Indiana Teacher Retirement).... The Court was not furnished with any

figure as to [Husband's] income for his carpentry and/or construction work.

14. [Wife's] reported income from her full-time employment at Federal Mogul was \$20,831.10. [Wife] has no other source of income....

\* \* \*

22. The Court finds [Husband] has a vested right to receive benefits from the Indiana Teacher Retirement Fund for the rest of his life. The Court further finds this benefit is presently payable at the rate of \$1,823.61.

23. The Court finds that [Husband] is also entitled to receive an annual payment from the Logansport Community School of \$7,613.42. The Court finds this annual payment will continue through [Husband's] 62nd birthday in 2008.

24. Other than daily living expenses and the parties' respective attorney's fees, there are no debts of the parties to be determined and divided.

\* \* \*

The Court now makes the following conclusions based upon the findings of fact set forth above and after a reasonable consideration of the same:

\* \* \*

- B. The Court concludes that [Husband] should be awarded the following assets as his sole and separate property:

1991 Ford F150	\$ 3,000.00
Beacon Credit Union Savings	\$ 14,928.33
Community State Savings	\$ 8,061.59
AIG Valic Annuity	\$ 1,598.71
Western Res. Life IRA	\$ 78,514.00
Western Res. Annuity	\$ 78,675.00
AUL Group Annuity	\$ 55,454.87
Community State Bank IRA	\$ 6,008.68
MONY Life Ins. Cash value	\$ 12,092.04
Northwestern Mut. Life Ins. Cash Value	\$ 12,238.48
	<u>\$270,571.70</u>

- C. The Court concludes that [Wife] should be awarded the following assets as her sole and separate property:

Marital Home	\$ 118,000.00
1994 Oldsmobile	\$ 1,500.00
Diversified Credit Union	\$ 2,899.79

Pension Benefits	\$ 2,068.08
401(K)	\$ 23,410.67
MONEY life insurance	\$ 2,873.35
Cash	\$ 26,000.00
Savings	<u>\$ 10,000.00</u>
	\$ 186,751.89

D. To equalize the property distribution, [Husband] will transfer to [Wife] \$41,910 pursuant to a QDRO from the Western Reserve Life IRA. [Wife] is entitled to any interest in that amount from the date of this order.

E. The Court concludes that each party presently will receive certain pension or retirement benefits for the rest of their lives and that those benefits are divisible assets in the marriage. Here, the Court is referring specifically to [Husband's] Indiana State Teacher Retirement Fund benefits; his early retirement payments from Logansport Community Schools; and [Wife's] Federal Mogul pension. The Court notes that neither has provided the Court with a present cash value for these items.

F. The Court concludes that it is appropriate to divide the retirement assets of the marriage. *After [Wife] has retired* the total pension retirement income will be equally divided. Pension retirement income includes [Husband's] Indiana State Teacher Retirement Fund benefits, [Husband's] early retirement payments from Logansport Community Schools, if any, and [Wife's] Federal Mogul pension. Equal division will equal a monthly payment from [Husband] to [Wife] such that each of them receives 50% of the total payment from the three sources listed above.... *The payments ordered above do not start until [Wife] has retired from Federal Mogul* and shall end with the death of either party.

Appellant's App. pp. 19-21 (emphases, ellipses, and brackets in memorandum decision, formatting altered).

On direct appeal, we affirmed the trial court in all respects, save its disposition of Husband's Indiana State Teacher Retirement Fund benefits and his early retirement payments from Logansport Community Schools. We concluded that

the trial court's findings of fact are insufficient to justify the manner in which it exercised its discretion in awarding Husband the full amount of his pension retirement income until Wife retires. Accordingly, we are constrained to reverse and remand this issue to the trial court with directions to divide Husband's pension equity between Husband and Wife and for proceedings consistent with this opinion.

Appellant's App. p. 8.

### **Discussion and Decision**

Indiana Code section 31-15-7-5 provides:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
  - (A) before the marriage; or
  - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
  - (A) a final division of property; and
  - (B) a final determination of the property rights of the parties.

“Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, the disposition of marital assets is committed to the sound

discretion of the trial court.” *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our consideration on appeal. Thus, we will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.

*Id.* (citations, quotation marks, and brackets omitted).

Wife contends that the trial court’s reasoning on remand is still insufficient to justify an unequal distribution and that an alleged typographical error in our first opinion, when corrected, requires an equal distribution. Husband counters that the trial court’s reasoning contained in its order on remand justifies an unequal distribution and that Wife is estopped from challenging the new distribution in any event. In the end, however, we need not address the merits of either party’s claims, as we conclude that the trial court’s disposition after remand ran counter to the instructions given in our prior decision, a prior decision that settled the issue and which we will not revisit.

Under the law of the case doctrine, an appellate court’s determination of a legal issue is binding both on the trial court on remand and the appellate court on a subsequent appeal, given the same case with substantially the same facts. All issues decided directly or implicitly in a prior decision are binding on all subsequent portions of the case. The doctrine merely expresses the practice of courts generally to refuse to reopen what has been decided. The doctrine is based upon the sound policy that when an issue is once litigated and decided, that should be the end of the matter.

*Humphreys v. Day*, 735 N.E.2d 837, 841 (Ind. Ct. App. 2000) (citations omitted).

We conclude that our prior decision in this case, read as a whole, instructed the trial court to order an equal division of the entire marital estate, including Husband's retirement benefits. In that decision, we first noted that the trial court's conclusion in the dissolution decree that the retirement assets be divided "such that each of them receives 50% of the total payment from the three [pension] sources listed above" was supported by the evidence and its findings. Appellant's App. p. 25. Despite this, the trial court then ordered an unequal division, which, we observed, "penalize[d] Wife by forcing her to either retire early or forfeit a portion of the marital estate she would otherwise be entitled to receive." Appellant's App. p. 25. Finally, as previously mentioned, we concluded that "the trial court's findings of fact are insufficient to justify the manner in which it exercised its discretion in awarding Husband the full amount of his pension retirement income until Wife retires." Appellant's App. p. 25.

Our prior conclusions that an equal division was justified by the evidence and the trial court's unequal division was insufficiently justified by its findings (along with our observation that an unequal division would penalize Wife) demonstrate that our intent in our prior decision was to remand for the entry of an equal division of the marital estate, including Husband's retirement benefits. Quite simply, any other disposition would be inconsistent with the reasoning we employed.<sup>1</sup> Because we see no reason to revisit that earlier decision, it is the law of the case, and we consequently reverse and remand with

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<sup>1</sup> We need not address Wife's contention that we mistakenly used the word "equity" instead of "equally" in the third-to-last sentence of our first decision. Even assuming, *arguendo*, that use of "equity" represented a typographical error, substituting "equally" does nothing more than produce the same result.

instructions to order a present equal division of Husband's retirement benefits without regard to Wife's employment status.<sup>2</sup> In addition, the order issued will also provide that, when Wife does retire, she and Husband will each receive an equal share of the sum of their retirement benefits.

We reverse the judgment of the trial court and remand with instructions.

DARDEN, J., concurs.

BAKER, J., concurring with separate opinion.

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<sup>2</sup> Husband contends that Wife is estopped from challenging the trial court's order on remand because she allegedly failed to introduce any competent evidence regarding the value of Husband's retirement benefits. *See Galloway v. Galloway*, 855 N.E.2d 302, 306 (Ind. Ct. App. 2006) (concluding that husband was estopped from challenging distribution of marital assets when no evidence regarding value of two assets was introduced and one was awarded to each former spouse). Because we have concluded, however, that the assets in question are to be divided equally, an equal distribution is assured regardless of value, rendering the issue of estoppel moot. *See id.* at 306 n.1 ("We note that an option available to the trial court under these circumstances would have been to divide each of these assets equally in-kind, giving Harold half of Kathryn's pension and Kathryn half of Harold's auction business, which would have assured an equal division.").



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SHIRLEY ANN MINKS,

Appellant-Respondent,

vs.

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No. 09A02-0709-CV-778

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**BAKER, Chief Judge, concurring with separate opinion.**

I agree that we are compelled by the result of the prior appeal of this matter to reverse and remand. Unfortunately, it was incumbent upon the trial court to comply with that panel's order to divide Husband's pension equity between Husband and Wife. Were we permitted to review the merits of the decision reached following the first appeal of this matter, I note that I would likely reach a different conclusion than the one reached by that panel. Inasmuch as we may not engage in such a review, however, I am compelled to concur with the majority's decision to reverse and remand.